

Forum Nobis

international law * human rights * the environment

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April 1, 2021

Honorable Robert W. Lehrburger
United States Magistrate Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

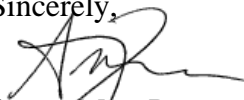
RE: *Chevron v. Donziger*, No. 11-cv-691

Dear Judge Lehrburger,

I write in reference to Judge Kaplan's order of March 26, 2021, Dkt. 2607, remanding Chevron's motion for civil contempt to Your Honor for reconsideration in light of the Second Circuit opinion dated March 4, 2021 in Case No. 18-855(L). I write to confirm that an opportunity for full briefing will be provided as part of the remand, or to request such briefing.

The need for careful briefing is self-evident. In its decision, the Second Circuit held that "[d]espite the [RICO] Injunction's language imposing a constructive trust on all property 'traceable to the [j]udgment or the enforcement of the [j]udgment,' the Stay Order left open the possibility that Donziger could raise money as he had before, and continue to be paid from the money he raised," and that "a reasonable person could interpret [the language of the Stay Opinion] to mean that Donziger's monthly retainer payments could continue as long as no *collection* occurred." Slip op. at 37-38 (emphasis original). It short, it was reasonable to consider funds raised to cover litigation expenses, including Mr. Donziger's fees, as outside the operation of the constructive trust. Perforce it was reasonable to facilitate the transfer of litigation expense funds to Mr. Donziger without violating the constructive trust. The same analysis applies to the identical language in paragraph 1 of the Default Judgment. As to this court's findings on the Roger Waters funding, those findings tracked Judge Kaplan's "profiting" analysis, also rooted in claims about traceability and the scope of the constructive trust. As will be explained, these findings also do not survive under the correct analysis now provided by the Second Circuit.

Sincerely,



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